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6 Attorneys for Herbert Gottlieb, an individual and
 7 SWIdent, LLC, a California Limited Liability Company
 (erroneously sued as SWIdent, Inc., a limited liability corporation)
 8

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 NACIO SYSTEMS, INC., a Nevada Corporation,

12 Plaintiff,

13 v.

14 HERBERT GOTTLIEB and SWIdent, INC., a
 15 California LLC,

16 Defendants.

17 CASE NO. C 07 3481 PJH

18 **DECLARATION OF HERBERT GOTTLIEB
 IN SUPPORT OF MOTION FOR ORDER
 STAYING LITIGATION AND
 COMPELLING ARBITRATION OF ALL
 CLAIMS**

19 **FILED CONCURRENTLY:**
 20 **NOTICE OF MOTION AND MOTION;
 DECLARATION OF RICHARD J. IDELL;
 REQUEST FOR JUDICIAL NOTICE;
 [PROPOSED] ORDER**

21 **Date:** October 24, 2007

22 **Time:** 9:00 a.m.

23 **Place:** Courtroom 3, 17th Floor

24 **Complaint Filed:** July 3, 2007

25 **Honorable Phyllis J. Hamilton Presiding**

26 I, Herbert Gottlieb, declare as follows under penalty of perjury:

27 1. I am a Defendant in the above action. All the matters stated herein are of my own
 personal knowledge and if sworn as a witness I could and would testify competently concerning the
 28 matters set forth herein.

Case No: C 07 3481 PJH

1 2. NACIO's Complaint names me and SWIdent, Inc., a California limited liability
 2 corporation. SWIdent, Inc., a California limited liability corporation does not exist. However,
 3 SWIdent, LLC is, in fact, a California limited liability company that is owned, in part, by me.
 4 SWIdent, LLC is my successor.

5 3. Attached hereto as Exhibit "A" is a true and correct copy of my Employment
 6 Agreement with NACIO SYSTEMS, INC. entered into on December 1, 2004. The Employment
 7 Agreement purports to be between myself, as employee, and Attest Systems, a division of Interactive
 8 Holding Group, Inc., as employer. However, Interactive Holdings Group, Inc. is a wholly-owned
 9 subsidiary of Plaintiff NACIO SYSTEMS, INC ("NACIO"). During my employment I reported
 10 directly to NACIO's President, Mr. Murray Goldenberg, and for the majority of my employment my
 11 paychecks were issued by NACIO.

12 4. Attached hereto as Exhibit "B" is a true and correct copy of the Promissory Note I was
 13 given by NACIO and that was a material part of my Employment Agreement. In fact, Paragraph 4.1 of
 14 my Employment Agreement states, in relevant part, "This Agreement together with the Secured
 15 Promissory Note shall be viewed as a single document." Moreover, Paragraph 7.6 of my Employment
 16 Agreement states, in relevant part, that the "Agreement, including the Secured Note Payable...
 17 constitutes the entire and only agreement between the parties relating to employment of Employee
 18 [myself] with the Company [NACIO]." The Promissory Note was payable in monthly installments of
 19 \$2,500.00 each with an amortization over approximately 57 months, and payable at 6% per annum.
 20 However, in or about February of 2006, it was agreed that NACIO would accelerate payments and
 21 make payments to GOTTLIEB of \$5,000.00 per month.

22 5. Attached hereto as Exhibit "C" is the Consulting Agreement dated April 1, 2006,
 23 between me and NACIO. Although NACIO never signed the Consulting Agreement, they made
 24 several payments to me under the Agreement.

25 6. Both the Employment Agreement (Exhibits "A" and "B" attached hereto) and the
 26 Consulting Agreement (Exhibit "C" attached hereto) contain arbitration clauses.

27 7. The arbitration clause of the Employment Agreement is found in Paragraph 7.1, and is
 28 set forth in full as follows:

7.1 Arbitration

(a) The Company [Attest Systems, a division of Interactive Holding Group, Inc.] and Employee [HERBERT M. GOTTLIEB] agree that any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, shall be settled by binding arbitration, unless otherwise required by law, to be held in Marin County, California in accordance with the National Rules for Resolution of Employment Disputes then in effect of the American Arbitration Association (the "Rules"). The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive, and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. The arbitrator is hereby authorized to award to the prevailing party the costs (including reasonable attorney's fees and expenses) of any such arbitration.

(b) The arbitrator(s) shall apply California law to the merits of any dispute or claim, without reference to the rules of conflicts of law. Employee hereby consents to the personal jurisdiction of the state and federal courts located in California for any action or proceeding arising from or relating to any arbitration in which the parties are participants.

(c) The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgement of the powers of the arbitrator.

(d) Employee understands that this Agreement does not prohibit Employee from pursuing an administrative claim with a local, state or federal administrative body such as the Department of Fair Employment and Housing, the Equal Opportunity Commission or the workers' compensation board.

(e) EMPLOYEE HAS READ AND UNDERSTANDS THIS SECTION 7.1 WHICH, DISCUSSES ARBITRATION. EMPLOYEE UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, EMPLOYEE AGREES, EXCEPT AS PROVIDED IN SECTION 7.1 (d) TO SUBMIT ANY CLAIMS ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE, BREACH OR TERMINATION THEREOF TO BINDING ARBITRATION, UNLESS OTHERWISE REQUIRED BY LAW, AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF EMPLOYEE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL ASPECTS OF

1 EMPLOYEE'S RELATIONSHIP WITH THE COMPANY, INCLUDING
 2 BUT NOT LIMITED TO, CLAIMS OF HARASSMENT,
 3 DISCRIMINATION, WRONGFUL TERMINATION AND ANY
 4 STATUTORY CLAIMS.

5 8. The arbitration clause in the Consulting Agreement is found at Paragraph 9 and is set
 6 forth in full as follows:

7 9. Arbitration and Equitable Relief.

8 9.1 Arbitration. Consultant [GOTTLIEB] agrees that any and
 9 all controversies, claims or disputes with anyone (including the Company
 10 [NACIO, a wholly owned subsidiary of Encompass Holdings Inc., a
 11 Nevada corporation] and any employee, officer, director, shareholder or
 12 benefit plan of the Company, in its capacity as such or otherwise) arising
 13 out of, relating to or resulting from Consultant's performance of the
 14 Services under this Agreement or the termination of this Agreement,
 15 including any breach of this Agreement, shall be subject to binding
 16 arbitration. CONSULTANT AGREES TO ARBITRATE, AND
 17 THEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY
 18 WITH RESPECT TO, THE FOLLOWING DISPUTES, INCLUDING
 19 BUT NOT LIMITED TO: ANY STATUTORY CLAIMS UNDER
 STATE OR FEDERAL LAW, CLAIMS UNDER TITLE VII OF THE
 CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH
 DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN
 EMPLOYMENT ACT OF 1967, CLAIMS OF HARASSMENT,
 DISCRIMINATION OR WRONGFUL TERMINATION AND ANY
 STATUTORY CLAIMS. Consultant understands that this Agreement to
 arbitrate also applies to any disputes that the Company may have with
 Consultant.

20 9.2 Procedure. Consultant agrees that any arbitration will be
 21 administered by the American Arbitration Association ("AAA"), and that
 22 a neutral arbitrator will be selected in a manner consistent with its rules.
 23 Consultant agrees that the arbitrator will have the power to decide any
 24 motions brought by any party to the arbitration, including discovery
 25 motions, motions for summary judgment and/or adjudication and motions
 26 to dismiss and demurrers, prior to any arbitration hearing. Consultant
 27 agrees that the arbitrator will issue a written decision on the merits.
 Consultant also agrees that the arbitrator will have the power to award any
 remedies, including attorneys' fees and costs, available under applicable
 law. Consultant understands that the Company will pay for any
 administrative or hearing fees charged by the arbitrator or AAA.

28 9.3 Remedy. Except as provided under California law,

1 arbitration will be the sole, exclusive and final remedy for any dispute
 2 between the Company and Consultant. Accordingly, except as provided
 3 under California law, neither the Company nor Consultant will be
 4 permitted to pursue court action regarding claims that are subject to
 5 arbitration. Notwithstanding the foregoing, the arbitrator will not have the
 6 authority to disregard or refuse to enforce any lawful Company policy, and
 7 the arbitrator shall not order or require the Company to adopt a policy not
 8 otherwise required by law which the Company has not adopted.

9 9.4 Administrative Relief. Consultant understands that this
 10 Agreement does not prohibit Consultant from pursuing an administrative
 11 claim with a local, state or federal administrative body such as the
 12 Department of Fair Employment and Housing, the Equal Employment
 13 Opportunity Commission or the workers' compensation board.

14 9.5 Voluntary Nature of Agreement. Consultant acknowledges
 15 and agrees that Consultant is executing this Agreement voluntarily and
 16 without any duress or undue influence by the Company or anyone else.
 17 Consultant further acknowledges and agrees that Consultant has carefully
 18 read this Agreement and has asked any questions needed to understand the
 19 terms, consequences and binding effect of this Agreement and fully
 20 understand it, including that Consultant is waiving its right to a jury trial.
 21 Finally, Consultant agrees that Consultant has been provided an
 22 opportunity to seek the advice of an attorney of its choice before signing
 23 this Agreement.

24 9. Pursuant to the above-quoted arbitration clauses contained in my Agreements with
 25 NACIO, a binding arbitration was held in or about November of 2006.

26 10. Attached hereto as Exhibit "D" is a copy of the Final Decision and award from the first
 27 arbitration proceeding between myself and NACIO. The Final Decision was issued by the arbitrator
 28 on December 13, 2006.

29 11. Attached hereto as Exhibit "E" is a copy of the Judgment that was entered by the Marin
 30 County Superior Court on April 18, 2007, confirming the Final Decision (see Exhibit "D") and the
 31 arbitration award.

32 I declare under penalty of perjury the foregoing is true and correct and that this Declaration was
 33 executed on the 19th of September, 2007 in San Francisco, California.

34 
 35 Herbert Gottlieb

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Idell & Seitel, LLP 465 California Street, Suite 300, San Francisco, California 94104.

On September 19, 2007, I served the following document(s):

**DECLARATION OF HERBERT GOTTLIEB IN SUPPORT OF MOTION FOR ORDER
STAYING LITIGATION AND COMPELLING ARBITRATION OF ALL CLAIMS;
MEMORANDUM OF POINTS AND AUTHORITIES**

by **ELECTRONIC MAIL**. As this case is subject to the United States District Court for the Northern District of California ECF program, pursuant to General Rule 45, upon the filing of the above-entitled document(s) an automatically generated e-mail message was generated by the Court's electronic filing system and sent to the address(es) shown below and constitutes service on the receiving party.

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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and I executed this declaration at San Francisco, California.

 Suzanne Slavens